

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5890 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.THAKKAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

AJITSINHJI GODJI JADEJA

Versus

STATE OF GUJARAT

Appearance:

MR YS MANKAD for Petitioner

MR M.A.BUKHARI,AGP for Respondent No. 1, 2

CORAM : MR.JUSTICE C.K.THAKKAR

Date of decision: 30/03/2000

ORAL JUDGEMENT

This petition is filed for quashing and setting aside an order passed by the District Magistrate, Kutch, Bhuj, respondent No.2 herein on 7th July 1987 , Annexure 'F' and also the order passed by the State Government,

respondent No.1 on October 21, 1987,Annexure `H'.

The case of the petitioner was that he is an agriculturist having irrigated land admeasuring A-24, G-26 in village Hajapar on border area. He was having a licence under the Arms Act, 1959 and was possessing two arms (i) 12 bore gun and (ii) pistol. The licence was renewed from time to time in accordance with the provisions of the Arms Act.

In December, 1985 , an application was made by the petitioner to respondent No.2- District Magistrate for renewal of licence. It appears that a notice was issued on 30th July, 1986 by the second respondent, Annexure `C',wherein, it was inter alia stated by the licensing authority that the petitioner had made application for renewal of licence of both the arms. It would, however, not be advisable to renew the licence for both the arms. It was prima facie decided not to renew licence of pistol. The petitioner was,therefore, called upon to show cause as to why licence of pistol should not be renewed . The petitioner submitted his reply and the second respondent was satisfied, after consideringthe reply and submissions made by the petitioner that there was no reason to cancel the licence of pistol and the notice was, therefore, withdrawn on September 23, 1986.

According to the petitioner, without there being change in circumstances ,within a very short period of three months, another show cause notice a was issued on 27th January, 1987 , Annexure `D' and the petitioner was called upon to show cause why , in the light of negative opinion submitted by the District Superintendent of Police (DSP), his licence of pistol should not be cancelled. Petitioner was asked to submit such reply within ten days from the receipt of notice, failing which appropriate action would be taken, presuming that he had nothing to say in the matter. Petitioner submitted his reply on 30th January, 1987. The second respondent, on 7th July, 1987 passed an order wherein it was stated that that in the light of the negative opinion expressed by the DSP, the licence was required to be cancelled and accordingly, it was cancelled. It was also observed in the order passed by the licensing authority that considering the facts and circumstances of the case, that there was no occasion when pistol was used, in the circumstances, in his opinion, there was no reason to renew the licence and accordingly, order was passed. Being aggrieved by the said order, appeal was preferred which was also dismissed by the State against which, the

present petition is filed.

Mr. Mankad for the petitioner contended that both the authorities have committed an error of law and misconstrued the provisions of Sections 3, 13, 14 and 15 of the Act. He submitted that grant of licence is one thing and renewal thereof is a different thing. Once the licence is granted, ordinarily, a person is allowed to get it renewed. No doubt, the licensing authority has power not to renew a licence or even to cancel it, but for that, reasons are required to be recorded and there must be circumstances on the basis of which such action can be taken. He also submitted that under the Arms Act, a person can hold three arms under one and the same licence. The petitioner was holding two arms. Possessing two arms under one licence was thus in consonance with law. He submitted that notice was issued by the licensing authority not to renew licence of pistol but he was satisfied that in the facts and circumstances of the case, the action of cancellation of licence of pistol was not called for and accordingly, notice was revoked.

Apart from the fact that immediate action should not have been taken, the counsel submitted, no circumstances were shown to be present why such action was thought necessary. He further contended that it was stated in the notice as well as in the order that considering negative opinion of the DSP, such action was required to be taken and was accordingly taken. But the petitioner was kept in complete dark and not supplied the opinion and factors which weighed with the DSP in forming such opinion or expressing negative attitude. It was stated by Mr. Mankad that both the authorities have unequivocally observed in the orders that no case was registered against the petitioner. Hence, if there was negative opinion, it ought to have communicated to the petitioner as there was no good reason to take such decision, particularly when Section 15 (3) provides that ordinarily a licence should be renewed "unless the licensing authority, for the reasons to be recorded in writing, otherwise decides". In the instant case, since there was nothing, both the orders are required to be quashed and set aside.

Mr. Bukhari, on the other hand, supported the orders passed by the authorities. He submitted that there was negative opinion of DSP which was rightly taken into account by the licensing authority as well as the State Government.

In my opinion, the petition deserves to be allowed. Apart from the fact that in September, 1986, notice was revoked and renewal was granted, there was no reason to initiate proceedings once again and passing the order relying on the so called negative opinion of the DSP when the said opinion was never communicated to the petitioner. The petitioner was not informed as to why such opinion was given by the DSP and whether the petitioner had to say anything against the said opinion. Looking to the orders passed by the licensing authority refusing to renew the licence, it is clear that the said negative opinion weighed with the authority in passing the impugned order. Reading the order, it is clear that notice, dated 27th January, 1987 was issued in pursuance of the negative opinion submitted by the DSP. In these circumstances, in my opinion, in the absence of recording of reasons in support of the order, and without supplying the material on which reliance was placed, the action deserves to be quashed and set aside and accordingly, it is set aside.

For the foregoing reasons, the petition deserves to be allowed and is accordingly allowed. The order passed by the District Magistrate, respondent No.2 on 7th July, 1987 and confirmed by the State Government on 21st October, 1987 are quashed and set aside. Rule is made absolute . No order as to costs.

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